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FILED

Date 12/8/15 By *Susan Saylor*

9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2016-29

13 **JAMES ROBERT BERZINSKI**
14 **13941 Ramona Avenue, Unit J**
Chino, CA 91710

A C C U S A T I O N

15 **Operator's License No. OPR 12237,**
16 **Branch 3**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the
22 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
23 Affairs.

24 2. On or about June 24, 2011, the Structural Pest Control Board issued Operator's
25 License Number OPR 12237 to James Robert Berzinski (Respondent). The Operator's License
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 June 30, 2016, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Structural Pest Control Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

5. Section 8625 of the Code states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code states, in pertinent part, that the Board/Director/Registrar may suspend or revoke a license when it finds that the licensee has been convicted of a crime.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
2 'registration.'

3 9. Section 8649 of the Code states:

4 Conviction of a crime substantially related to the qualifications, functions, and
5 duties of a structural pest control operator, field representative, applicator, or registered
6 company is a ground for disciplinary action. The certified record of conviction shall be
7 conclusive evidence thereof.

8 10. Section 8654 of the Code states:

9 Any individual who has been denied a license for any of the reasons specified in
10 Section 8568, or who has had his or her license revoked, or whose license is under
11 suspension, or who has failed to renew his or her license while it was under
12 suspension, or who has been a member, officer, director, associate, qualifying
13 manager, or responsible managing employee of any partnership, corporation, firm, or
14 association whose application for a company registration has been denied for any of
15 the reasons specified in Section 8568, or whose company registration has been
16 revoked as a result of disciplinary action, or whose company registration is under
17 suspension, and while acting as such member, officer, director, associate, qualifying
18 manager, or responsible managing employee had knowledge of or participated in any
19 of the prohibited acts for which the license or registration was denied, suspended or
20 revoked, shall be prohibited from serving as an officer, director, associate, partner,
21 qualifying manager, or responsible managing employee of a registered company, and
22 the employment, election or association of such person by a registered company is a
23 ground for disciplinary action.

24 11. Section 8655 of the Code states:

25 A plea or verdict of guilty or a conviction following a plea of nolo contendere made
26 to a charge substantially related to the qualifications, functions, and duties of a structural
27 pest control operator, field representative, applicator, or registered company is deemed to
28 be a conviction within the meaning of this article or Section 8568 of this chapter. The
board may order the license or registration suspended or revoked, or may decline to issue
a license, when the time for appeal has elapsed, or the judgment of conviction has been
affirmed on appeal or when an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of Section
1203.4 of the Penal Code allowing the individual or registered company to withdraw a
plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information or indictment.

23 REGULATORY PROVISIONS

24 12. California Code of Regulations, title 16, section 1937.1 states:

25 For the purposes of denial, suspension or revocation of a license or company
26 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
27 or act shall be considered to be substantially related to the qualifications, functions or
28 duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to
a substantial degree it evidences present or potential unfitness of such licensee or
registered company to perform the functions authorized by the license or company
registration in a manner consistent with the public health, safety, or welfare. Such crimes

1 or acts shall include, but not be limited to, the following:

2 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

3 (b) Commission of any of the following in connection with the practice of
4 structural pest control:

5 (1) Fiscal dishonesty

6 (2) Fraud

7 (3) Theft

8 (4) Violations relating to the misuse of pesticides.

9 13. California Code of Regulations, title 16, section 1937.2 states:

10

11 (b) When considering the suspension or revocation of a structural pest control
12 license or company registration on the grounds that the licensee or registered company
13 has been convicted of a crime, the board, in evaluating the rehabilitation of such person or
company and his or her or its present eligibility for a license or company registration will
consider the following:

14 (1) Nature and severity of the act(s) or offense(s).

15 (2) Total criminal record.

16 (3) The time that has elapsed since commission of the act(s) or offense(s).

17 (4) Whether the licensee or registered company has complied with any terms of
18 parole, probation, restitution or any other sanctions lawfully imposed against the licensee
or registered company.

19 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4
20 of the Penal Code.

21 (6) Evidence, if any of rehabilitation submitted by the licensee or registered
company.

22 COST RECOVERY

23 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
24 the administrative law judge to direct a licentiate found to have committed a violation or violations
25 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
27 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
28 included in a stipulated settlement.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(February 3, 2015 Criminal Convictions for Convicted Felon in Possession of a Firearm and**
3 **Possession of a Controlled Substance on August 20, 2014)**

4 12. Respondent has subjected his operator license to disciplinary action under sections
5 490 and 8649 of the Code in that he was convicted of a crime that is substantially related to the
6 qualifications, functions, and duties of a licensee. The circumstances are as follows:

7 a. On or about February 3, 2015, in a criminal proceeding entitled *People of*
8 *the State of California v. James Robert Berzinski*, in Riverside County Superior Court, case
9 number RIF 1403800, Respondent was convicted on his plea of guilty of violating Penal Code
10 section 29800, subdivision (a), convicted felon in possession of a firearm, to wit, a High Point
11 9MM, a felony and Health and Safety Code section 11377(a), possession of a controlled
12 substance, a misdemeanor.

13 b. As a result of the conviction, on or about February 3, 2015, Respondent
14 was sentenced to the low-term of sixteen months in state prison. Respondent was further ordered
15 to pay fees, fines and restitution.

16 c. The circumstances that led to the conviction are that on or about August
17 20, 2014, deputies from the Riverside County Sheriff's Department Narcotics unit entered a
18 residence in the City of Riverside with a search warrant. The deputies spoke with Respondent in
19 front of the residence and Respondent admitted he had methamphetamine in his possession.
20 During the search, deputies also located a loaded 9mm semi automatic handgun, with six 9mm
21 rounds inside a black backpack which was in Respondent's bedroom closet. Deputies also found
22 three digital gram scales, a binder with numerous pay-owe sheets, brown baggies containing
23 suspected methamphetamine, and cash. Respondent was subsequently arrested.

24 **DISCIPLINE CONSIDERATIONS**

25 13. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges that on or about 1997 in a prior disciplinary action entitled "In the Matter of
27 the Statement of Issues Against: James Robert Berzinski before the Structural Pest Control Board,
28 in Case Number 97-32," Respondent was issued a field representative's license which was

1 revoked, stayed, and placed on probation for three years with standard terms of probation. That
2 decision is now final and is incorporated by reference as if fully set forth.

3 14. To further determine the degree of discipline, if any, to be imposed on Respondent,
4 Complainant alleges that on or about January 20, 2004, in a prior disciplinary action entitled "In
5 the Matter of the Statement of Issues Against: James Robert Berzinski before the Structural Pest
6 Control Board, in Case Number 2004-43." Respondent was issued field representative license,
7 revoked, stayed, and placed on probation for three years with standard terms of probation. That
8 decision is now final and is incorporated by reference as if fully set forth.

9 15. To further determine the degree of discipline, on March 21, 2000, Respondent was
10 convicted in the Orange County Superior Court, in case number 99NF2916FA, of one count of
11 violating California Health and Safety Code section 11378 (Possession of a Controlled Substance),
12 a felony crime substantially related to the qualifications, functions and duties of a field
13 representative. Respondent also admitted the allegations that he had prior convictions. As a result
14 of the convictions and the associated allegation(s) Respondent was sentenced to two years, 8
15 months in state prison. Respondent was also ordered to register as a drug offender pursuant to
16 Health and Safety Code Section 11590.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Structural Pest Control Board issue a decision:

20 1. Revoking or suspending Operator's License Number OPR 12237, issued to James
21 Robert Berzinski;

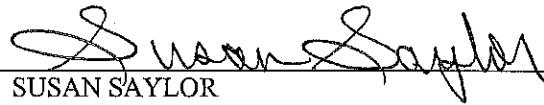
22 2. Ordering James Robert Berzinski to pay the Structural Pest Control Board the
23 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
24 Professions Code section 125.3;

25 3. Prohibiting James Robert Berzinski from serving as an officer, director, associate,
26 partner, qualifying manager, or responsible managing employee of any registered company during
27 the period that discipline is imposed on Operator License Number OPR 12237, issued to James
28 Robert Berzinski;

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4. Taking such other and further action as deemed necessary and proper.

DATED: 12/8/15



SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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